

Appl. No. 10/821,052  
Amdt. date February 2, 2006  
Reply to Office action November 2, 2005

### REMARKS/ARGUMENTS

Please reconsider the application in view of the above amendments and the following remarks. Applicants thank the Examiner for carefully considering this application.

Claims 1 through 18 are in this application. Applicants have amended claims 1, 4, 6, 10, 11, 14 and 15. Amendments to the stated claims are in an attempt to further define and clarify the claimed invention. Applicants have canceled claims 2, 3, 12 and 13.

#### Claim Rejections

Claims 1 and 11 are rejected under 35 USC 102(b) as being anticipated by Sawyer (U.S. Patent 5,794,140). Applicants respectfully traverse the Examiner's assertion.

Sawyer describes a telephone system, which detects when the system caller capacity is below a defined capacity threshold. At that point, a message is sent to the subscribers of that system inviting them to use the system. Applicants' present invention detects when the system caller capacity for a particular tower is at or above a defined caller capacity. At that point, a message is sent to callers informing them of the tower capacity. The caller decides to attempt a telephone call in view of that information. Applicants have amended the claims to better reflect the features of the present invention.

Claims 3-6 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawyer in view of Padovani et al (U.S. Patent 6,442,398). Applicants respectfully traverse the Examiner's assertion. The examiner asserts that Sawyer fails to disclose the load is measured as a count of the number of wireless devices that are connected through the tower, but Padovani teaches a method and apparatus for determining loading in system a communication and teaches a that a simple means of determining communication loading by simply count the number of active users. The examiner cites the abstract, lines 1-2 and col. 4, lines 32-34. The examiner concludes that it would be obvious to count the number of wireless devices as suggested by Padovani.

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Padovani mentions a count of the number of active users as a means to determine reverse link loading. However, in the following sentence, Padovani suggest that this approach is not a good indicator of reverse link loading. Padovani further states that effects of soft hand-off greatly decrease the correlation between the number of active users and the actual loading at a base station. Although Padovani means counting of users as a means to determining loading, Padovani discourages this approach. In fact, this approach was mentioned as one of several reverse link approaches that Padovani advocated against doing. The purpose of the Padovani invention was to present a better approach to determine reverse link loading. It cannot be over stressed, the conclusion of Padovani in col. 4, lines 38-40 that soft hand-off greatly decreases the correlation between the number of active users and the actual loading at a base station. Applicants submit that Padovani actually teaches away from using the number of active users to determine system load. Applicants submit that because of this teaching away from Applicants' claim invention, it is not obvious to combine Padovani with Sawyer to produce the Applicants' present invention. One cannot establish a prima facie case of obviousness when a reference teaches away from the claimed invention.

Claims 2 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawyer in view of Sauter et al. US. 2004/0209623. The examiner asserts that Sawyer fails to teach the step of detecting when calling activity has exceeded the established threshold capacity for a tower, but Sauter discloses a method of controlling the access to a public land mobile network. Sauter describes a method and system that restricts access to a system based on the capacity of the system at the time.

To establish a prima facie case of obviousness, there must some teaching or suggestion to combine the references. Sawyer and Sauter appear to contradictory purposes. Sawyer attempts to promote the use of a system when the amount of usage low. This effort is to increase the number of callers using the system. Sauter attempts to restrict/limit or discourage the use of the system when there is a high volume of usage in order to allow easier use by certain designated types of callers. If one desires to promote the use of a system, it is not obvious to look to methods that restrict system usage. Further, there is nothing in Sawyer (use promotion) that teach or suggest a combination with Sauter (use restriction).

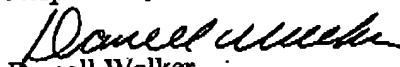
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Claims 7-9 and 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawyer in view of Padovani and further in view of Sauter et al. For the reasons previously stated, Applicants submit that it is not obvious to combine the teachings of Sawyer with either Padovani or Sauter to produce Applicants' present invention. As stated, Padovani actually teaches away from the step of determining capacity by counting the actual number of users connected through a tower. Further, Sauter describes a method and system that are contradictory to Sawyer in both objective and method of implementation. Therefore, there is Sawyer does not teach or suggest the combination with either cited reference. As a result, there is prime facie case of obviousness as asserted by the examiner.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sawyer in view of Padovani and Sauter et al., and Chen et al. US 2005/0059401. Again, Applicants submit that there is nothing in Sawyer that teach or suggest the combination of Padovani and Sauter and Chen. As a result, there is prime facie case of obviousness as asserted by the examiner.

In view of the above explanation, Applicants respectfully submit that none of the art of record (alone or in combination) teaches, discloses or even suggests the invention as recited in each of Applicant's claims. Applicant further submits that all of the pending claims are in condition for allowance. Withdrawal of the rejections and passage to issuance is respectfully requested. Applicant believes this reply to be fully responsive to all outstanding issues and place this application in condition for allowance. If this belief is incorrect, or other issues arise, do not hesitate to contact the undersigned at the below listed telephone number.

Respectfully Submitted,

  
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